UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/AC.154/279
5 April 1995

ORIGINAL: ENGLISH

COMMITTEE ON RELATIONS WITH
THE HOST COUNTRY

LETTER DATED 5 APRIL 1995 FROM THE CHARGE D'AFFAIRES A.I.
OF THE PERMANENT MISSION OF CUBA TO THE UNITED NATIONS
ADDRESSED TO THE CHAIRMAN OF THE COMMITTEE ON RELATIONS
WITH THE HOST COUNTRY

Enclosed please find the text of note No. HC-16-95 dated 22 March 1995 from the United States Mission to the United Nations addressed to the Permanent Mission of Cuba to the United Nations, and of note verbale No. 192 dated 5 April 1995 from the Permanent Mission of Cuba to the United Nations addressed to the United States Mission to the United Nations, regarding the incidents in the vicinity of the Permanent Mission of Cuba on 30 August 1994.

Both documents are in reference to note verbale No. 158/95 dated 22 March 1995 from the Permanent Mission of Cuba to the United Nations, which was distributed as an official document of the Committee (A/AC.154/278, annex).

I kindly request the distribution of the present letter and its annexes as an official document of the Committee on Relations with the Host Country.

(Signed) Bruno E. Rodríguez PARRILLA

95-09898 (E) 070495 120495

/...

ANNEX I

Note dated 22 March 1995 from the United States Mission to the United Nations addressed to the Permanent Mission of Cuba to the United Nations

The United States Mission to the United Nations presents its compliments to the Permanent Mission of Cuba to the United Nations and is obliged to refer to the events of 30 August 1994 and the ensuing investigation by law-enforcement authorities.

The District Attorney of the County of New York has informed the United States Government that it plans to file a criminal complaint against Messrs Saúl Hermida Griego, Edmundo Suárez Hernández and Alexis Bandrich Vega. The complaint alleges that, on 30 August 1994 at about 1230 hours, in front of the Cuban Mission, those individuals committed the offences of riot in the first degree and obstruction of government administration in the second degree. The complaint alleges that Mr. Bandrich Vega also committed attempted assault in the second degree. The District Attorney's office has also apprised the United States Government that it is considering whether to bring charges against Mr. Reynaldo Despaigne Boga arising out of the 30 August incident.

With respect to the conduct of the demonstrators in the above-mentioned incident, on 21 March the United States Attorney's Office for the Southern District of New York filed federal criminal charges against several of the demonstrators for their actions at the Cuban Mission. In addition, demonstrators have already faced local criminal charges brought by New York authorities.

Mr. Hermida Griego and Mr. Suárez Hernández are accredited members of the diplomatic staff of the Permanent Mission of Cuba. In accordance with United States policy in such cases and section 14 of the Convention on the Privileges and Immunities of the United Nations, the United States Mission requests that the Government of Cuba waive the immunity of Mr. Hermida Griego and Mr. Suárez Hernández from the criminal jurisdiction of the United States in order that the charges against them may be adjudicated in accordance with the laws of the state of New York.

The United States Mission wishes to call attention to the Permanent Mission of Cuba the Department of State's policy which provides that, in the absence of a waiver in cases of serious offences such as these, the Department requires the alleged offenders to leave the United States and, in accordance with the Immigration and Nationality Act, prevents their return unless they submit fully to the jurisdiction of the court with jurisdiction over the offence.

Mr. Bandrich Vega is no longer a member of the Permanent Mission of Cuba. He enjoys residual immunity solely with respect to acts performed by him in the exercise of his functions. This form of immunity must be asserted before, and proven to, the appropriate judicial authorities. Mr. Bandrich Vega is not immune from arrest.

Mr. Reynaldo Despaigne Boga is a non-diplomatic member of the staff of the Permanent Mission. Should the District Attorney's Office decide to bring charges against him, he would enjoy immunity from the jurisdiction of the United States only with respect to acts performed by him in his official capacity and falling within his functions. Again, this form of immunity must be asserted before, and proven to, the appropriate judicial authorities. Mr. Despaigne Boga is not immune from arrest.

The United States Government regrets the excessive and unacceptable behaviour of certain members of the Permanent Mission who took direct action against both demonstrators and members of the New York Police Department, resulting in the injury of police officers. It was this behaviour which led to the District Attorney's Office's decision to file charges against them.

The United States Mission asks that the Permanent Mission of Cuba reply to this request by 7 April 1995.

ANNEX II

Note verbale dated 5 April 1995 from the Permanent Mission of Cuba to the United Nations addressed to the United States Mission to the United Nations

The Permanent Mission of Cuba to the United Nations presents its compliments to the United States Permanent Mission to the United Nations and refers to note No. HC-16-95 dated 22 March 1995 from the United States Mission to the United Nations.

As the United States Mission to the United Nations is well aware, the Permanent Mission of Cuba has repeatedly denounced the activities that openly and systematically are carried out with impunity by certain individuals and groups of individuals, belonging to terrorist organizations, in an aggressive and threatening stance, against the premises and personnel of the Permanent Mission of Cuba. The United States Mission to the United Nations is also aware that, also repeatedly, the Permanent Mission of Cuba to the United Nations has reaffirmed the need that the local New York City authorities and the United States federal authorities fulfil the obligations deriving from being the host country of the United Nations, and prevent the repetitions of such acts.

The Permanent Mission of Cuba to the United Nations has addressed innumerable notes to the United States Mission to the United Nations on situations of this nature, among them notes Nos. 1094 of 10 May 1993, 1368 of 9 July 1993, 121 of 4 March 1994, 378 of 14 June 1994, 493 of 1 August 1994, 556 of 30 August 1994, 567 of 6 September 1994, 610 of 24 September 1994, 653 of 22 October 1994, 709 of 9 November 1994 (A/AC.154/276, annex) and 158 of 22 March 1995 (A/AC.154/278, annex).

Until now, the calls of attention by the Permanent Mission of Cuba regarding the situation that has been created have not received a satisfactory response from United States authorities, who have not taken sufficient and effective measures to put an end to the actions denounced by the Cuban Mission and to prevent them from degenerating into acts of violence, with all the serious consequences that this entails.

The situation referred to in the note of reference of the United States Mission to the United Nations is a direct result of such inaction. Details of the incident were immediately reported by different means to the United States Mission to the United Nations and hence, through it, to the local New York City authorities and to the United States federal authorities, including note No. 556 of 30 August 1994 of the Permanent Mission of Cuba to the United Nations, followed by notes Nos. 567 and 653 of 6 September and 22 October 1994, respectively, regarding further acts of violence that took place in the following days and weeks. Furthermore, the attention of the United States Mission to the United Nations is called to note verbale No. 158/95 of 22 March 1995 of the Permanent Mission of Cuba (ibid.), reiterating that the host country authorities have not implemented the measures agreed upon for the clarification of the incidents of 30 August 1994, to which note No. HC-16-95 does not give response either.

As was indicated in the Cuban note of 30 August 1994, the officials of the Permanent Mission of Cuba that had to intervene in the incidents which took place on that date did nothing else but protect the door of the Permanent Mission against attempts to penetrate by force into the Cuban diplomatic premises. It will be recalled that several individuals, after having failed in such attempts, chained the Mission's door, thus preventing the entry and exit of Cuban officials into and from their own Permanent Mission. Hence, in the light of the evolution of the incident, the security of Cuban officials who were arriving at that moment and were, thus, outside the Mission, was placed in very serious jeopardy. It will also be noted that, upon the arrival of the New York Police Department police reinforcements, there was clear evidence that police officers were acting without any contingency plan or defined purpose, while using unnecessary force against duly identified officials of the Permanent Mission of Cuba who were in place. With this attitude, instead of re-establishing order, which should have been the primary objective of those police officers, they contributed to aggravating the incident even more.

In the case of the incidents of 30 August 1994, the object of the note of reference of the United States Mission to the United Nations, the Cuban personnel mentioned in said note did nothing but defend the premises of their Permanent Mission from an obvious act of aggression, conceived and prepared beforehand, which the authorities of the host country did not prevent. For doing so, the above-mentioned Cuban officials were not only assaulted, but also detained, handcuffed and insulted, and are now being accused in New York City's courts of law of alleged crimes, which originated solely in the lack of compliance by the authorities of the host country with the obligation to prevent incidents such as those that took place in the Permanent Mission of Cuba to the United Nations on the above-mentioned date.

The Permanent Mission of Cuba takes note of the affirmation contained in the note of reference of the United States Mission to the United Nations regarding the fact that those who are truly to blame for the incidents that took place on 30 August 1994, that is, those who attempted to storm the Permanent Mission of Cuba to the United Nations and assaulted its personnel, in violation of federal laws of the United States of America, have been charged with federal crimes. The Permanent Mission of Cuba expects that due process of law will be taken to its ultimate consequences and will conclude with the conviction of the said individuals. Not to do so would put into question the will of the authorities of the United States of America to apply and enforce its own legislation in all cases, without any selectivity whatsoever, and would give a sense of impunity to perpetrators of such crimes which would encourage their repetition.

International law and the legal instruments subscribed to that end compel the host country to prevent incidents such as this, which not only jeopardize the physical integrity of a diplomatic mission and the safety of its personnel, but also hinder its effective functioning and constitute an attempt against its dignity. Considering the lack of all effective measures by the host country to fulfil its responsibilities in this regard, the Permanent Mission of Cuba to the United Nations was compelled, in this case, to take measures indispensable to protect its premises and the safety of those who work and live in the Permanent Mission, including dozens of children.

It would have been much more convenient for everyone involved if the host country, instead of ignoring the continuous calls of attention made by the Permanent Mission of Cuba in a timely manner, had taken appropriate measures, in fulfilment of its responsibilities, to prevent these incidents from taking place.

In the light of all of the above, the Permanent Mission of Cuba to the United Nations strongly rejects the contents of note No. HC-16-95 of 22 March 1995 from the United States Mission to the United Nations and indicates that the Government of the Republic of Cuba will in no way waive the diplomatic immunity of the officials mentioned in the said note.

Furthermore, the Permanent Mission of Cuba to the United Nations, while availing itself of this opportunity to renew to the United States Mission to the United Nations the assurance of its highest consideration, reiterates once again that any incident that takes place, such as the one of reference, as a result of the lack of compliance by the pertinent authorities of the United States with their obligations regarding the safety and protection of permanent missions and their personnel, is and will be the sole responsibility of the Government of the United States of America.